

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 788 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AMAR TEXTILES

Versus

DIRAJI RUPAJI

Appearance:

MR MO JOSHI for Petitioner

Mr. T.R.Mishra for the respondent.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 18/10/96

ORAL JUDGEMENT

This is a petition against the order of the 3rd Labour Court, Ahmedabad given in an application under section 33(C)(2) of the Industrial Disputes Act registered before him as Application no. 1710 of 1981 which the learned Judge disposed of by a judgment dated 19.11.1984.

2 At page 18 is the copy of the petition with schedule A annexed to the petition at page 20. According to the respondent, he had entered into the services on and from 1.1.1973 as a weaver in the petitioner company and his daily wage was Rs. 60/-. His claim is with regard to paid holidays, no amount was ever paid to him nor had he enjoyed any leave. This application came to be given on 20.11.1981.

3. Before the trial Court, on behalf of the petitioner company, a witness was examined at exh.11 and in keeping with the written statement at exh. 7 page 21, the said deposition at page 25 reveals that the claim of the respondent was disputed.

4. The learned Judge after hearing both sides and taking into consideration the material produced in para 10 of his judgment at page 36, has categorically held that it is not possible to come to a definite conclusion that the petitioner is entitled to receive the amount claimed. Nonetheless, in the opinion of the learned Judge, when the petitioner company has produced receipts and vouchers of payment against paid holidays for the year 1980 only and the explanation for non-production of payment for other years being not acceptable, straightaway finding is given that for three years' period, the petitioner shall be entitled to the amount. That is how the amount is worked out at Rs. 1008/- in the final year at page no. 38.

5. The learned Judge has proceeded with the matter as if there is a presumption operating in favour of the respondent workman. This being an application for recovery of money claim, the least that the workman was to do was to establish his claim. When the learned Judge himself comes to the conclusion that it is not possible to come to a definite conclusion as to the claim of the workman, the result should have been to dismiss the application.

6. There is no basis for the learned Judge to award the said amount of Rs. 1008/-. The petition is therefore, required to be allowed. Accordingly, the petition is allowed. The judgment of the trial court is set aside. The recovery application of the respondent workman is dismissed. Rule is made absolute accordingly with no order as to costs.

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